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**Linda McCulloch**  
Superintendent

DATE: April 18, 2008

TO: School Food Authorities (SFAs)

FROM: Christine Emerson, School Nutrition Programs Director

SUBJECT: Allowability of Procurement Fees in School Food Authority (SFA) Contracts - SP 15-2008

This memorandum is intended to provide clarification of what is allowable, for contracts executed both prior to and after publication of the final procurement rule (October 2007).

For contracts executed after the November 30, 2007 effective date, discounts, rebates and applicable credits must be returned to the SFAs nonprofit school food service account. Therefore, any fee (including a procurement fee) that is directly tied to the amount of discounts, rebates, and applicable credits to be returned to the SFA is an unallowable nonprofit school food service account cost, as it undermines the intent of the new regulation. A fee structured in this way is clearly intended to return some or all of the discounts, rebates, and applicable credits to the company with whom the SFA has contracted for services rather than to ensure that they accrue to the nonprofit school food service account. This is true whether the fee is set forth in the solicitation/contract or not.

SFAs may, however, develop solicitations in a way that allows for management and/or administrative fees that include fees for procurement services. The procurement fee could be a separate fee or part of another contract fee, as long as it remains fixed.

For contracts that pre-date the effective date of the final procurement regulation, procurement fees are allowable, even if they are tied directly to the amount of discounts, rebates, and applicable credits to be returned to an SFA, as long as they were properly considered in the solicitation document.

If you have any questions, please contact School Nutrition Programs at (406) 444-2501.